

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|---------------------------|---|---|--|
| Investigator: Alfredo Gonzalez | Team: Squad #7 | CCRB Case #: 201506511 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 07/25/2015 11:30 PM | Location of Incident: [REDACTED] | Precinct: 123 | 18 Mo. SOL 1/25/2017 | EO SOL 1/25/2017 | |
| Date/Time CV Reported Fri, 07/31/2015 2:12 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 08/05/2015 4:06 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------------|--------|--------|---------|
| 1. SGT Nikolaos Stefopoulos | 04686 | 944294 | 123 PCT |
| 2. Officers | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM Marchelo Quagliata | 10644 | 953279 | 123 PCT |
| 2. POM Thomas Rodes | 07758 | 953327 | 123 PCT |
| 3. POF Lisa Fernandez | 31786 | 925278 | 123 PCT |
| 4. POM Frank Maglio | 14181 | 949735 | 123 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------------|--|-----------------------------|
| A.SGT Nikolaos Stefopoulos | Abuse: Sgt. Nikolaos Stefopoulos stopped the car in which § 87(2)(b) was an occupant. | [REDACTED] |
| B. Officers | Force: Officers pointed their guns at § 87(2)(b) | [REDACTED] |
| C.SGT Nikolaos Stefopoulos | Force: Sgt. Nikolaos Stefopoulos used physical force against § 87(2)(b) | [REDACTED] |
| D.SGT Nikolaos Stefopoulos | Discourtesy: Sgt. Nikolaos Stefopoulos spoke discourteously to § 87(2)(b) | [REDACTED] |
| E.SGT Nikolaos Stefopoulos | Abuse: Sgt. Nikolaos Stefopoulos searched the car in which § 87(2)(b) was an occupant. | [REDACTED] |
| § 87(2)(g), § 87(4-b) | [REDACTED] | [REDACTED] |

Case Summary

On July 25, 2015, at approximately 11:30 p.m., § 87(2)(b) was driving on Arden Avenue in Staten Island with § 87(2)(b) in the front passenger's seat and individuals known only as Ari and Loddi in the back passengers' seats. § 87(2)(b) was driving to meet his girlfriend. Along the way, § 87(2)(b) cut off a driver (identified via the Event for this incident as an individual known only as § 87(2)(b) and § 87(2)(b) began pursuing him. In the vicinity of § 87(2)(b) flashed his high beams at an unmarked police vehicle driven by Sgt. Nikolaos Stefopoulos, who then quickly made a U-turn and stopped § 87(2)(b)'s vehicle (**Allegation A**). Sgt. Stefopoulos then commanded the occupants of the vehicle to exit. Immediately after, Sgt. Stefopoulos, PO Lisa Fernandez, and PO Frank Maglio, approached the vehicle with their guns pointed (**Allegation B**). As § 87(2)(b) was exiting the vehicle, Sgt. Stefopoulos allegedly grabbed him by the arm and neck and threw him to the ground (**Allegation C**). § 87(2)(b) was then frisked and placed in handcuffs.

When § 87(2)(b) was thrown to the ground, his wallet fell out of his hands. After being handcuffed, § 87(2)(b) asked Sgt. Stefopoulos if he could pick up his wallet. In response, Sgt. Stefopoulos allegedly told § 87(2)(b) "Don't fucking worry about your wallet" (**Allegation D**). After all individuals were removed from the vehicle, Sgt. Stefopoulos proceeded to search the vehicle (**Allegation E**). After conducting an initial search, Sgt. Stefopoulos recovered marijuana in the back seat. Afterwards, Sgt. Stefopoulos informed the occupants that they had been stopped because of a report of a gun in the vehicle, made by § 87(2)(b) who had since left the scene. All four individuals were then taken to the 123rd Precinct stationhouse, issued summonses for marijuana possession, and released.

Mediation, Civil and Criminal Histories

§ 87(2)(b) declined to participate in mediation. As of October 20, 2015, § 87(2)(b) has not filed a notice of claim with the City of New York (Board Review 01). § 87(2)(b)'s criminal history could not be verified because his NYSID could not be recovered from the NYPD's Booking and Arraignment Disposition System database.

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 02).
- Sgt. Stefopoulos has been a member of the NYPD for eight years. Sgt. Stefopoulos has been the subject of 22 allegations stemming from nine cases. In CCRB 201411079, a frisk allegation and a search allegation were substantiated, with command discipline recommended.
- Sgt. Stefopoulos currently has two open cases, CCRB 201409178 and 201412620.

Potential Issues

- § 87(2)(b) the front passenger in the vehicle, provided a brief phone statement, but he did not respond to subsequent attempts to schedule an in-person statement. § 87(2)(b) and § 87(2)(b) were unable to provide the full names of the back passengers, and they were therefore unable to be contacted as witnesses (Board Review 03).
- According to the Event for this incident, § 87(2)(b) was stopped in regards to a report of a firearm made by § 87(2)(b) began following § 87(2)(b) after being cut-off,

and he was at the scene when Sgt. Stefopoulos conducted the vehicle stop. Attempts to contact the number listed on the Event Information document for § 87(2)(b) were unfruitful because the number had been changed or disconnected (Board Review 04).

Findings and Recommendations

Explanation of Subject Officer Identification

- Sgt. Stefopoulos acknowledged conducting the vehicle stop and acknowledged that he authorized and conducted the vehicle search himself. He could not recall whether additional officers participated in the search; however, as the patrol sergeant at the scene, and the one that authorized the search, any additional officers that may have participated in the search would have done so under his direction. Therefore, the stop and vehicle search allegations have been accredited to Sgt. Stefopoulos alone.

Allegations Not Pleaded

- **Abuse of Authority:** A frisk allegation is not being pleaded because at the time that § 87(2)(b) was frisked, he was reasonably considered to be under arrest.

Allegation A –Abuse of Authority: Sgt. Nikolaos Stefopoulos stopped the car in which § 87(2)(b) was an occupant.

It is undisputed that Sgt. Stefopoulos stopped the car in which § 87(2)(b) was an occupant. It is also undisputed that § 87(2)(b) had contacted 911, informed the police that a person in the vehicle had displayed a pistol, was in pursuit of § 87(2)(b)'s vehicle, and signaled to Sgt. Stefopoulos using his headlights.

§ 87(2)(b) alleged that his vehicle was stopped after § 87(2)(b) flashed his high beams as a signal to Sgt. Stefopoulos, though at the time, § 87(2)(b) was unaware that § 87(2)(b) had called 911 alleging that there was a firearm in his vehicle. § 87(2)(b) denied that he displayed a pistol at § 87(2)(b) and he confirmed that he was driving a grey Ford Fusion (Board Review 05).

While out on patrol, Sgt. Stefopoulos received a radio transmission in regards to a firearm in a vehicle. The radio transmission provided the make, color, and license plate of the vehicle. It also stated that § 87(2)(b) was pursuing the vehicle in question. While on Arden Avenue, Sgt. Stefopoulos observed the vehicle and § 87(2)(b) behind it, who then flashed his lights as a signal. Sgt. Stefopoulos then pulled up beside § 87(2)(b) who stated, "Those are the guys right there that have a gun." Sgt. Stefopoulos immediately made a U-turn, and stopped § 87(2)(b)'s vehicle. Sgt. Stefopoulos stated that the occupants of the vehicle were considered to be under arrest the moment in which § 87(2)(b) identified them as having a firearm (Board Review 06).

The 911 communication CD confirmed that § 87(2)(b) described the vehicle that he was pursuing as a silver Ford Fusion with license plate# § 87(2)(b) and was at the location when § 87(2)(b)'s vehicle was stopped (Board Review 07).

To stop a vehicle, officers must have probable cause to believe that the motorist is committing a traffic violation or reasonable suspicion to believe that the vehicle or its occupants have been involved in a crime. People v. Robinson, 97 N.Y.2d 341 (2001) (see Board Review 08).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation B – Force: Officers pointed their guns at § 87(2)(b)

Allegation C – Force: Sgt. Nikolaos Stefopoulos used physical force against § 87(2)(b)

It is undisputed that officers pointed their guns at § 87(2)(b). It is also undisputed that Sgt. Stefopoulos removed § 87(2)(b) from his vehicle and placed him on the ground; § 87(2)(g)

In his in-person statement, § 87(2)(b) stated that Sgt. Stefopoulos commanded him to exit, and then approached his vehicle with his gun pointed at him. Immediately after, two additional officers arrived and approached the vehicle with their guns pointed as well. While in the process of exiting the vehicle, § 87(2)(b) was allegedly grabbed by the arm and neck and thrown to the ground by Sgt. Stefopoulos. § 87(2)(b) alleged that he sustained scrapes on his elbows and knees as a result of being thrown to the ground (see Board Review 05).

Sgt. Stefopoulos admitted to exiting his vehicle with his gun pointed at § 87(2)(b) because of the nature of the report. Sgt. Stefopoulos did not know whether PO Fernandez or PO Maglio pointed their guns. Sgt. Stefopoulos first commanded the occupants to keep their hands on the ceiling; however, after observing that § 87(2)(b)'s hands and the back passenger's hands kept moving away from the ceiling, he commanded § 87(2)(b) to exit the vehicle, but he did not immediately do so. Sgt. Stefopoulos acknowledged opening the door and removing § 87(2)(b) from the vehicle, but he did so only because he considered § 87(2)(b) to be non-compliant with his command to exit the vehicle in a prompt manner. Sgt. Stefopoulos denied throwing § 87(2)(b) onto the ground, and stated that only grabbed § 87(2)(b)'s wrist and guided him to the ground. According to Sgt. Stefopoulos, § 87(2)(b) first landed on his hands and knees, and then got on his stomach (Board Review 06). PO Marchelo Quagliata arrived after all of the vehicle's occupants were on the ground and handcuffed. He did not observe any injuries on § 87(2)(b) at the location (Board Review 09).

An officer can draw and point his or her firearm at another person if he or she has a reasonable fear for his or her own, or another's, safety. People v. Gliner, OATH Index 955/00 (see Board Review 10). All members of the service at the scene of a police incident are expected to immediately establish firearms control, to use the minimum amount of force necessary, and to employ non-lethal alternatives, as appropriate. NYPD Patrol Guide, Section 203-11 (Board Review 11).

§ 87(2)(b), § 87(2)(g)

Allegation D – Sgt. Nikilaos Stefopoulos spoke discourteously to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that Sgt. Stefopoulos told him not to “fucking worry” about his wallet after he asked if he could pick it up (Board Review 05).

Sgt. Stefopoulos acknowledged that § 87(2)(b) had asked the whereabouts of his wallet, but he denied that he, or any other officer, told § 87(2)(b) not to “fucking worry” about the wallet (Board Review 06). PO Quagliata denied that Sgt. Stefopoulos, or any other officer, spoke discourteously to § 87(2)(b) (Board Review 09).

§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Sgt. Nikolaos Stefopoulos searched the car in which § 87(2)(b) was an occupant.

It is undisputed that Sgt. Stefopoulos conducted a search of § 87(2)(b)'s vehicle. It is also undisputed that marijuana was found in the backseat during the initial search, for which each occupant received a summons.

§ 87(2)(b) alleged that after all of the occupants were in handcuffs, Sgt. Stefopoulos entered the vehicle and searched the glove box, the center console, and the backseats. § 87(2)(b) also alleged that additional officers partook in the search after Sgt. Stefopoulos' initial search. The search conducted with additional officers was more intrusive and included a search of the trunk. § 87(2)(b) acknowledged that marijuana had been found in the back seat and stated that “it was not hidden.” § 87(2)(b) believed that it belonged to one of the back passengers (see Board Review 05).

According to Sgt. Stefopoulos, after all of the occupants had been removed and secured, he searched the vehicle within the “lunge-able and reachable” areas for the firearm. Sgt. Stefopoulos could not recall the specific order in which he conducted the initial search, but during its course, he found a clear Ziploc bag of marijuana in the back middle seat in plain view. As a result, he conducted a more thorough search of the vehicle, searching the glove compartment and the trunk. Sgt. Stefopoulos could not recall whether any officers at the scene assisted with the search of the vehicle (Board Review 06). PO Quagliata stated that, upon arrival, he observed Sgt. Stefopoulos inside the vehicle on the driver's side, but did not see the specific area that Sgt. Stefopoulos searched because he was focused on the individuals on the ground. Given that PO Quagliata was towards the back of the vehicle, he was able to observe when Sgt. Stefopoulos eventually found the marijuana in the back seat, but he indicated that Sgt. Stefopoulos found it when he pulled down an arm rest in the back seat (Board review 09).

An officer may conduct a limited search of a vehicle when there is a substantial likelihood of a weapon being present in the vehicle, thereby posing an articulable and specific threat to the officer's safety, or if there is probable cause to believe that the vehicle contains contraband or evidence of a crime. *People v. Newman*, 96 A.D.2d (1st Dept. 2012) (Board Review 12). A warrantless search of a vehicle is permissible given the “automobile exception” to the search warrant requirement if it meets the following criteria: there must be an arrest, the officers must have probable cause to believe that the evidence or contraband will be found inside the vehicle, and there must exist, however flexible, a nexus between the arrest and the purpose of the search. *People v. Galak*, 81 N.Y.2d 463 (1993) (Board Review 13).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Squad: _____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date